

0100 727089

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
918 SIXTEENTH STREET, N.W.  
SUITE 200  
WASHINGTON, D.C.

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

20006-2973

(202) 393-2266  
FAX (202) 393-2156

OF COUNSEL  
URBAN A. LESTER

August 9, 1995

19555

AUG 9 1995 2:54 PM

LICENSING BRANCH

AUG 9 2 54 PM '95

RECEIVED  
OFFICE OF THE  
SECRETARY

Mr. Vernon A. Williams  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are three (3) copies of a Security Agreement (Assignment), dated as of August 9, 1995. a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed document are:

Debtor: ACF Industries, Incorporated  
3301 Rider Trail South  
Earth City, Missouri 63045

Secured Party: The Boatmen's National Bank of St. Louis  
800 Market Street  
St. Louis, Missouri 63101

A description of the railroad equipment covered by the enclosed document is:

546 cars bearing ACFX reporting marks and road numbers set forth on Schedule A attached to the Security Agreement.

Counters - Mr. Williams

Mr. Vernon A. Williams  
August 9, 1995  
Page 2

Also enclosed is a check in the amount of \$21.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return two stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', written in a cursive style.

Robert W. Alvord

RWA/bg  
Enclosures



Interstate Commerce Commission  
Washington, D.C. 20423-0001

8/9/95

Office Of The Secretary

Robert W. Alvord  
Alvord And Alvord  
918 Sixteenth Street, NW., Ste. 200  
Washington, DC., 20006-2973

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/9/95 at 3:00PM, and assigned recordation number(s). 19555.

Sincerely yours,

Vernon A. Williams  
Secretary

Enclosure(s)

(0100727089)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

1955  
AUG 9 1995 12 PM

SECURITY AGREEMENT (ASSIGNMENT)

BETWEEN

ACF INDUSTRIES, INCORPORATED

DEBTOR

AND

THE BOATMEN'S NATIONAL BANK OF ST. LOUIS

SECURED PARTY

Dated as of August 9, 1995

# TABLE OF CONTENTS

1.	GRANT OF SECURITY. . . . .	1
1.1	. . . . .	1
1.2	. . . . .	3
2.	COVENANTS AND WARRANTIES OF THE DEBTOR. . . . .	3
2.1	Debtor's Duties. . . . .	3
2.2	Maintenance; Insurance. . . . .	3
2.3	Warranty of Title. . . . .	4
2.4	Further Assurances. . . . .	4
2.5	Recordation and Filing. . . . .	5
2.6	Power of Attorney. . . . .	5
2.7	Chief Executive Office; Corporate Name Records. . . . .	5
2.8	Replacement of Collateral no Longer under Assigned Lease; Substitution of Collateral. . . . .	6
3.	SPECIAL PROVISIONS CONCERNING ASSIGNED LEASES. . . . .	6
3.1	. . . . .	6
3.2	. . . . .	6
4.	POSSESSION OF COLLATERAL AND USE OF EQUIPMENT; INSURANCE PROCEEDS. . . . .	7
4.1	Possession of Collateral. . . . .	7
4.2	Insurance Proceeds. . . . .	7
5.	SECURED PARTY'S RIGHTS. . . . .	8
5.1	. . . . .	8
5.2	. . . . .	9
5.3	. . . . .	9
5.4	. . . . .	10
5.5	. . . . .	11
6.	WAIVER BY DEBTOR. . . . .	11
7.	EFFECT OF SALE. . . . .	12
8.	APPLICATION OF SALE PROCEEDS. . . . .	12
8.1	. . . . .	12
8.2	. . . . .	12
8.3	. . . . .	12
9.	DISCONTINUANCE OF REMEDIES. . . . .	12
10.	REMEDIES CUMULATIVE. . . . .	12
11.	INDEMNITY. . . . .	13
12.	DEFINITIONS. . . . .	13
13.	MISCELLANEOUS. . . . .	15
13.1	Successors and Assigns. . . . .	15
13.2	Partial Invalidity. . . . .	15
13.3	Notices. . . . .	15
13.4	Releases. . . . .	15
13.6	Counterparts. . . . .	16
13.7	Headings. . . . .	16

## **SECURITY AGREEMENT**

This SECURITY AGREEMENT (ASSIGNMENT), dated as of August 9, 1995 (this "Security Agreement") is entered into between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (the "Debtor"), and THE BOATMEN'S NATIONAL BANK OF ST. LOUIS, a national banking association organized and existing under the laws of the United States (the "Secured Party"). Unless otherwise defined herein, all capitalized terms used herein and defined in the Loan Agreement are used herein as defined in the "Loan Agreement" (as hereinafter defined); provided that, where a term is defined by reference to a definition in the Loan Agreement, and the terms "Borrower" or "Bank" are contained in that definition, for purposes hereof, those terms shall be deemed to be the terms "Debtor" and "Secured Party", respectively.

### **Recitals**

- A. Debtor and Secured Party are parties to that certain \$20,000,000.00 Term Loan Agreement, of even date herewith (as the same may be amended, modified or supplemented from time to time, the "Loan Agreement").
- B. Pursuant to Section 1.01 of the Loan Agreement between the Debtor and the Secured Party, the Secured Party has agreed to make a Loan to the Debtor in the principal amount of \$20,000,000.00, subject to certain conditions precedent of which the execution and delivery of this Security Agreement is one.

### **Agreement**

#### **1. GRANT OF SECURITY.**

1.1 The Debtor, in consideration of the premises and of the sum of Ten Dollars received by the Debtor from the Secured Party and other good and valuable consideration, receipt and sufficiency whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Loan according to the terms of the Loan Agreement and Note, and to secure the payment and performance of all other Obligations, does hereby transfer, convey, warrant, mortgage, deliver, pledge, assign, and grant to the Secured Party, its successors and assigns, a continuing security interest in, and "Lien" (as hereinafter defined) on, all and singular of the Debtor's rights, title and interest in and to the following collateral (collectively, the "Collateral"): all of Debtor's properties, rights, title, interests and privileges, whether now owned or hereafter acquired:

(i) in certain railroad tank cars and covered hopper cars described on Schedule A hereto (collectively the "Equipment" or "Items of Equipment" and individually an "Item of Equipment"), together with all accessories, equipment, parts and appurtenances appertaining or attached to the Equipment, and all substitutions, renewals or

replacements of and additions, improvements, accessions and accumulations to, any and all of the Equipment, together with all the rents, issues, income, profits and avails therefrom and the proceeds thereof,

(ii) to each and every lease relating to, but only to the extent relating to, the Equipment (each such lease to such extent, but only to such extent, being an "Assigned Lease"), including but not limited to:

(a) all payments due and to become due under any Assigned Lease, whether as contractual obligations, damages or otherwise;

(b) all of its claims, rights, powers, or privileges and remedies under any Assigned Lease and, to the extent permitted by the lessee under any Assigned Lease, the right to cure a default by Debtor under any Assigned Lease; and

(c) all of its rights under any Assigned Lease to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, waiver or approval, together with full power and authority with respect to any Assigned Lease to demand, receive, enforce, collect or receipt for any of the foregoing rights or any property the subject of any of the Assigned Leases, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action which (in the opinion of the Secured Party) may be necessary or advisable in connection with any of the foregoing in so far, but only in so far as such rights relate to the Equipment and all rights of the Debtor hereunder and all proceeds of the foregoing together with all extensions, renewals and replacements thereof, whether now owned or hereafter acquired and all income, profits and avails therefrom, all rights thereunder and all proceeds thereof, (in so far as the same relate to or are derived from the Equipment);

(iii) the Cash Collateral Account, all amounts from time to time on deposit therein and all investments made with the proceeds thereof;

(iv) all documents evidencing, and all books and records relating to, the Collateral (including but not limited to, all computer programs, data, disks, tapes, media and printouts where the foregoing is stored or embodied, wherever located; and

(v) all cash and non-cash proceeds of the foregoing, all proceeds from insurance on any of the foregoing, all additions and accessions to and replacements and substitutions for any of the foregoing, everything that becomes (or is held for the purpose of being) affixed to or

installed in any of the foregoing, and all products, income and profits of or from the foregoing.

1.2 This Security Agreement shall be in full force and effect until all the Obligations have been fully and irrevocably paid, discharged and performed.

2. **COVENANTS AND WARRANTIES OF THE DEBTOR.** The Debtor covenants, warrants and agrees as follows:

2.1 **Debtor's Duties.** The Debtor covenants and agrees well and truly to perform, abide by and to be governed and restricted by, each and all of the terms, provisions, restrictions, covenants and agreements set forth in this Security Agreement and the Loan Agreement and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns, to the same extent as though each and all of said term, provisions, restrictions, covenants, amendments or supplements to the Loan Agreement were fully set out in an amendment or supplement to this Security Agreement.

2.2 **Maintenance; Insurance.**

(a) The Debtor at its own expense shall, or shall require and cause any lessee under each Assigned Lease to, maintain and service each Item of Equipment and comply with a preventive maintenance schedule which shall include testing, repair and overhaul of each Item of Equipment so that each Item of Equipment shall remain (i) in compliance with any and all applicable laws and regulations and eligible for railroad interchange in accordance with the rules of the Association of American Railroads ("AAR"), and (ii) suitable for immediate purchase or lease and use by a Class I linehaul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of sale upon an Event of Default. In no event shall any Item of Equipment be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Debtor for similar equipment.

(b) The Debtor shall maintain with responsible insurance companies, such insurance on such of its and its Subsidiaries' assets and properties (including but not limited to the Collateral), in such amounts and against such risks as is customarily maintained by similar businesses, and in any event, in an amount not less than the full fair insurable value of all such assets and properties where insurance is customarily maintained. For the purpose of this Section, insurance shall include self-insurance, provided the Debtor maintains adequate reserves to cover the risks not otherwise insured. Within 30 days of the end of each fiscal year of the Debtor, the Debtor shall furnish to the Secured Party evidence of insurance satisfactory to the Secured Party, including but not limited to a certificate of the chief financial officer (or other officer satisfactory to the Secured Party) of the Debtor evidencing the



maintenance of the insurance required hereunder. The Debtor represents and warrants to the Secured party that, as of the date of this Agreement, the Debtor maintained insurance as required under this Section and, to the extent self-insured, the Debtor maintains adequate reserves to cover the risks not otherwise insured.

**2.3 Warranty of Title.** As of the Advance Date, the Debtor shall have the right, power and authority to grant a valid, first priority Lien on, and security interest in, the Collateral to the Secured Party for the uses and purposes herein set forth; as of the Advance Date, no Lien (other than the Permitted Liens (as defined herein)) shall be attached to the Collateral and the Debtor shall warrant and defend the title to the Collateral against all claims and demands of all third Persons or Persons claiming by, through or under the Debtor. The Debtor shall not create, assume or allow to exist any Lien on the Collateral other than Permitted Liens. As used herein, "Lien" shall mean any mortgage, pledge, security interest, encumbrance, lease, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement and the filing of or agreement to give any financing statement under the Interstate Commerce Act ("ICA"), the Railway Act (Canada) or the UCC of any jurisdiction). As used herein, "Permitted Liens" shall mean (a) each of the Assigned Leases; (b) the Lien and security interest created by this Security Agreement; (c) the Lien of taxes, assessments or governmental charges or levies which are not at the time delinquent; (d) the Lien of taxes, assessments or governmental charges or levies which are delinquent but the validity of which is being contested in good faith by appropriate action diligently pursued, if the Debtor shall have set aside on its books adequate reserves in accordance with generally accepted accounting principles, provided that such proceeding shall suspend the collection of such taxes, assessments or governmental charges and, the Lien on and security interest in the Collateral, or any part thereof, would not in the opinion of the Secured Party be adversely affected or forfeited during the period of such contest; (e) Liens to secure obligations under worker's compensation laws or similar legislation to secure public or statutory obligations of the Debtor or any of its Subsidiaries, and (f) Liens imposed by law such as mechanics', workmen's, materialmen's, carriers' or other like Liens arising in the ordinary course of business which secure payment of obligations which are not past due or the validity of which are being contested in good faith by action diligently pursued, if the Debtor shall have set aside on its books adequate reserves in accordance with generally accepted accounting principles, provided that the Lien on and security interest in the Collateral, or any part thereof, would not in the opinion of the Secured Party be adversely affected or forfeited during the period of such contest.

**2.4 Further Assurances.** The Debtor shall, at its expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the Lien on, and security interest in, the

Collateral being created by this Security Agreement, whether such Collateral is now owned or hereafter acquired.

**2.5 Recordation and Filing.** The Debtor shall cause this Security Agreement and any supplements hereto, and all financing and continuation statements and similar notices required by applicable law, at all times to be kept, recorded and filed at no expense to the Secured Party in such manner and in such places as may be required by law in order fully to preserve and protect the rights of the Secured Party hereunder and shall, at its own expense, furnish to the Secured Party, promptly after the execution and delivery of this Security Agreement and of any Supplement to this Security Agreement, an opinion of counsel satisfactory to the Secured Party, stating that, in the opinion of such counsel, this Security Agreement or such supplement, as the case may be, has been properly recorded or filed for record as to make effective of record the Lien and security interest intended to be created by this Security Agreement and that such Lien and security interest is of first priority.

**2.6 Power of Attorney.** The Debtor does hereby irrevocably constitute and appoint the Secured Party, upon the occurrence and during the continuance of an Event of Default, its true and lawful attorney with full power of substitution for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, income and other sums which are assigned under Section 1.1 with full power to settle, adjust or compromise any claim thereunder as fully as the Debtor could itself do, and to endorse the name of the Debtor on all commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Debtor or otherwise, which the Secured Party may deem necessary or appropriate to protect and preserve the right, title and interest of the Secured Party in and to such rents and other sums and the security intended to be afforded hereby.

**2.7 Chief Executive Office; Corporate Name Records.** The chief executive office of Debtor is located at 3301 Rider Trail South, Earth City, Missouri 63045. Debtor shall not move its chief executive office except to such new location as Debtor may establish in accordance with the last sentence of this Section. Debtor shall not change its corporate name except after having complied with the requirements of the last sentence of this Section. Debtor shall not establish a new location for its chief executive or change its corporate name until (i) it shall have given to the Secured Party not less than 60 days' prior written notice of its intention so to do, clearly describing such new location or specifying such new corporate name, as the case may be, and providing such other information in connection therewith as the Secured Party may reasonably request, and (ii) with respect to such new location or such new corporation name, as the case may be, it shall have taken all action, satisfactory to the Secured Party, to maintain the first priority Lien and security interest of the Secured Party in the Collateral intended to be

granted by this Security Agreement at all times fully perfected and in full force and effect.

**2.8 Replacement of Collateral no Longer under Assigned Lease; Substitution of Collateral.** If for any reason and at any time when no Event of Default has occurred and is continuing unwaived, (i) any Item of Equipment is no longer under an Assigned Lease to a Third Party for a consecutive period of 180 days, or (ii) the Debtor desires to substitute other Collateral for any Item of Equipment (or for the Casualty Loss Proceeds with respect thereto as contemplated in Section 4.2(e)), the Debtor shall grant to Secured Party a first priority Lien on, and security interest in, a new unencumbered railroad tank car or covered hopper car of equal or greater AAR Value to the previously pledged Item of Equipment which is leased to a third party acceptable to Secured Party (each such replacement railroad tank car or covered hopper car, a "Replacement Unit") and its related lease (such related lease thereafter being an Assigned Lease); the AAR Value of each Replacement Unit shall be certified to Secured Party by an officer of the Debtor satisfactory to the Secured Party as of the date of such grant to Secured Party. Secured Party shall have all rights and interests in each Replacement Unit and its respective Assigned Lease as applicable to other Items of Equipment and Assigned Leases as described in this Security Agreement. Debtor shall execute and file or record any such instruments as are necessary to grant such rights and interests to Secured Party and to perfect Secured Party's Lien on, and security interest in, each Replacement Unit and the related Assigned Lease. Upon the request, and at the expense, of Debtor, the Secured Party shall execute and deliver releases in a form reasonably satisfactory to Debtor releasing from the Lien of this Security Agreement, and releasing all the Secured Party's interest in and to, any Item of Equipment for which there has been granted to Secured Party a Lien on, and security interest in, a Replacement Unit and its related Assigned Lease.

### **3. SPECIAL PROVISIONS CONCERNING ASSIGNED LEASES.**

**3.1** Unless there has occurred an Event of Default which is continuing unwaived, Debtor may exercise all of the Debtor's claims, rights, powers, privileges and remedies under the Assigned Leases, including, without limitation, the right to receive any and all monies due or to become due under the Assigned Leases, and to retain all copies (original or duplicates) of the Assigned Leases, provided that, without the prior written consent of the Secured Party, Debtor shall not enter into any amendment, modification, waiver or termination of any provision of any of the Assigned Leases other than those which do not have a material adverse effect on the value of such Assigned Leases.

**3.2** Debtor covenants and agrees to warrant and forever defend the title to the Assigned Leases, and all claims, rights, powers, privileges and remedies of the lessor thereunder, against the claims and demands of any Person and, upon the occurrence and during the continuance of an Event of Default, Debtor

acknowledges that the Secured Party shall have the full power and authority (but not the obligation) to take all actions as the Secured Party deems necessary or advisable to perform such actions on behalf of Debtor; provided, however, that by taking any such action, Secured Party shall not have assumed, or be obligated to perform, any of Debtor's obligations as lessor under the Assigned Lease. Furthermore, Debtor hereby covenants and agrees to execute and deliver to the Secured Party such other and further instruments of transfer, assignment and conveyance, and all such other documents and instruments as may be reasonably requested by the Secured Party more fully to transfer, assign and convey to and vest in the Secured Party to each of the Assigned Leases and all claims, rights, powers, privileges and remedies of the lessor thereunder.

#### **4. POSSESSION OF COLLATERAL AND USE OF EQUIPMENT; INSURANCE PROCEEDS.**

**4.1 Possession of Collateral.** So long as there is no Event of Default, the Debtor may remain in full possession, enjoyment and control of the Collateral, including each Assigned Lease, and may manage, operate and use the Equipment and each part thereof with all of the rights and franchises appertaining thereto.

#### **4.2 Insurance Proceeds.**

(a) If, prior to the occurrence of an Event of Default, an Item of Equipment is destroyed, lost, stolen, irreparably damaged, taken by any governmental entity or otherwise becomes unusable in the business of the Debtor (a "Casualty Loss"), at the option of the Debtor, either (i) the Debtor shall grant Secured Party a first priority security interest in, and Lien on, an unencumbered railroad tank car or covered hopper car as a Replacement Unit, along with the related Assigned Lease, in the manner provided in Section 2.8, and, in that event, any proceeds payable to the Debtor or to the Secured Party as a result of such Casualty Loss whether in respect of insurance proceeds, condemnation awards, payments from railroads or lessees or otherwise (collectively, "Casualty Loss Proceeds") shall be retained by or paid to the Debtor as reimbursement for the cost of such Replacement Unit, or (ii) all Casualty Loss Proceeds with respect to such Item of Equipment (which Casualty Loss Proceeds shall be in an amount at least equal to the AAR Value of such Item of Equipment) shall be paid to the Secured Party and the Secured Party shall be entitled to retain and hold such Casualty Loss Proceeds as additional Collateral hereunder in accordance with the following provisions (except that until the aggregate amount of such Casualty Loss Proceeds exceeds \$150,000, such amount may be retained by Debtor).

(b) To the extent that the Debtor shall receive any Casualty Loss Proceeds other than as permitted in Section 4.2(a)(i), such proceeds shall be held in trust for the benefit of Secured Party and shall be promptly turned over

to Secured Party in the exact form received (except for any necessary endorsements) to be held by the Secured Party as Collateral as aforesaid.

(c) All such Casualty Loss Proceeds received by the Secured Party shall be deposited by Secured Party into a special cash collateral account (the "Cash Collateral Account") maintained by the Debtor with the Secured Party, at the offices of Secured Party, in the name of the Debtor but under the sole control of the Secured Party.

(d) All amounts from time to time on deposit in the Cash Collateral Account shall, so long as no Event of Default shall have occurred and be continuing unwaived, be invested by Secured Party at the direction of Debtor in certificates of deposit of Secured Party with such maturities as Debtor shall request.

(e) Except as otherwise provided herein, no amount on deposit in the Cash Collateral Account shall be released by Secured Party except (i) to the extent that all or any part of such amount is to be applied, at the option of Debtor, to prepay, or satisfy, in whole or in part, any scheduled amortization of the Loan, or (ii) upon the request of the Debtor, an amount equal to the Casualty Loss Proceeds with respect to any Item of Equipment, if Debtor has granted Secured Party a first priority security interest in, and Lien on, an unencumbered railroad tank car or covered hopper car as a Replacement Unit along with the related Assigned Lease, in accordance with the procedure therefor in Section 2.8. Upon the occurrence and during the continuance of any Event of Default, all Casualty Loss Proceeds shall be paid to the Secured Party and applied by the Secured Party in the same manner as provided for sale proceeds in Section 8.

(f) If Casualty Loss Proceeds with respect to any Item of Equipment are received by the Secured Party and deposited in the Cash Collateral Account, the Secured Party, upon the request, and at the expense, of Debtor, shall execute and deliver releases in a form reasonably satisfactory to Debtor releasing from the Lien of this Security Agreement, and releasing all the Secured Party's interest in and to, such Item of Equipment.

**5. SECURED PARTY'S RIGHTS.** The Debtor agrees that when any Event of Default has occurred and is continuing, the Secured Party shall have the rights, options, duties and remedies of a secured party, and the Debtor shall have the rights and duties of a debtor, under the ICA, the Railway Act (Canada) and under the UCC of the State of Missouri (regardless of whether such UCC or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted), as applicable, and the Secured Party shall have the following rights and remedies:

**5.1** In accordance with the terms of the Loan Agreement, the Obligations shall be, or the Secured Party by written notice may

declare all of the Obligations to be, immediately due and payable; and thereupon all such unpaid balance, together with all accrued interest thereon, shall be and become immediately due and payable. Upon the occurrence of any Event of Default and during the continuance thereof, the Secured Party shall have all the rights of a secured party under the ICA, the Railway Act (Canada) and the UCC to enforce the assignments and security interests contained herein and in addition shall have the right (i) to enforce all claims, rights, powers, privileges and remedies of Debtor under any or all of the Assigned Leases, and/or (ii) to substitute itself or any nominee or agent in lieu of Debtor as party to any of the Assigned Leases and to notify the obligor of any Assigned Lease (Debtor hereby agreeing to deliver any such notice at the request of the Secured Party) that all payments and performance under the relevant Assigned Leases shall be made or rendered to Secured Party or such other Person as it may designate.

**5.2** The Secured Party personally, or by agents or attorneys, shall have the right (subject to compliance with any applicable mandatory legal requirements) to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the Debtor, with or without notice, demand, process of law or legal procedure, if this can be done without breach of the peace, and search for, take possession of, remove, keep and store the Collateral, or use and operate or lease the Collateral until sold.

**5.3** The Secured Party may take possession of the Equipment by requesting that the Debtor deliver possession of the Equipment to the Secured Party. Each Item of Equipment so delivered shall meet the standards then in effect, if any, under the interchange rules of the AAR applicable to railroad equipment of the same type as the Equipment. For the purposes of delivering possession of the Equipment to the Secured Party as above required, the Debtor shall at its own cost, expense and risk:

(a) forthwith, and in the usual manner (including but not by way of limitation, giving prompt telegraphic and written notice to the AAR and all railroads or other parties to which any Equipment has been interchanged or which are using the Equipment to return the Equipment so interchanged) place such Equipment upon such storage tracks as the Secured Party reasonably may designate;

(b) permit the Secured Party to store such Equipment on such tracks at the risk of the Debtor without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Secured Party; and

(c) transport, or cause the transportation of, the same to any reasonable destination on the Debtor's railroad lines or to any connecting carrier for shipment to a particular destination, all as directed by the Secured

Party. Upon or before the delivery to any such destination, unless the Secured Party or other parties shall remove the markings on the Equipment identifying the Debtor, the Debtor shall have the right to remove such markings; provided, however, that the Debtor shall have no obligation to remove such markings.

The assembling, delivery, storage, insurance and transporting of the Equipment as hereinbefore provided shall be at the expense and risk of the Debtor and are of the essence of this Security Agreement, and upon application to any court of equity having jurisdiction in the premises the Secured Party shall be entitled to a decree against the Debtor requiring specific performance of the covenants of the Debtor so to assemble, deliver, store and transport the Equipment. During any storage period, the Debtor shall, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and shall permit the Secured Party or any Person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Equipment, to inspect the same. All rents and per diem charges earned in respect of the Equipment after the Secured Party shall take possession of the Equipment shall belong to the Secured Party and, if received by the Debtor, shall be promptly turned over to the Secured Party. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided, within 60 days after request by Secured Party, the Debtor shall, in addition, pay to the Secured Party for each day thereafter, until such Item of Equipment is so assembled, delivered and stored, an amount equal to the amount, if any, by which interest at the rate after maturity provided for in the Loan Agreement, on the AAR Value of such Item of Equipment for each such day exceeds all gross amounts earned with respect to such Item of Equipment and received by Secured Party for each such day.

5.4 Any Collateral repossessed by the Secured Party under or pursuant to this Section 5 may be sold, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms as the Secured Party may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable. Any of the Collateral may be sold, leased or otherwise disposed of, in the condition in which the same existed when taken by the Secured Party or after any overhaul or repair which the Secured Party shall determine to be commercially reasonable. Any such disposition which shall be a private sale or other private proceedings permitted by such requirements shall be made upon not less than 10 days' written notice to Debtor specifying the times at which such disposition is to be made and the intended sale price or other consideration therefor, and shall be subject, for 10 days after the giving of such notice, to the right of Debtor or any nominee of Debtor to acquire the Collateral involved at such price or for such other consideration so specified. Any such disposition which shall be a public sale permitted by such

requirements shall be made upon not less than 10 days' written notice to Debtor specifying the time and place of such sale and, in the absence of applicable requirements of law, shall be by public auction (which may, at the Secured Party's option, be subject to reserve) after publication of notice of such auction not less than 10 days prior thereto in a newspaper in general circulation in the County of St. Louis, Missouri. To the extent permitted by any such requirement of law, the Secured Party may itself bid for and become the purchaser of the Collateral or any item thereof, offered for sale in accordance with this Section without accountability to Debtor (except to the extent of surplus money received as provided in Section 8). In the payment of the purchase price therefor, the Secured Party shall be entitled to have credit on account of the purchase price thereof of amounts owing to the Secured Party on account of the Obligations and the Secured Party may deliver the claims for the Loan, interest accrued thereon or other Obligations in lieu of cash up to the amount which would, upon distribution of the net proceeds of such sale, be payable thereon. If, under mandatory requirements of applicable law, the Secured Party shall be required to make disposition of the Collateral within a period of time which does not permit the giving of notice to Debtor as hereinabove provided, the Secured Party need give Debtor only such notice of disposition as shall be reasonably practicable in view of such mandatory requirements of applicable law.

**5.5** The Secured Party may proceed to protect and enforce this Security Agreement by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, for the recovery of judgment for the Obligations or for the enforcement of any other property, legal or equitable remedy available under applicable law.

**6. WAIVER BY DEBTOR.** To the extent permitted by law, the Debtor covenants that it shall not at any time insist upon or plead, or in any matter whatever, claim or take any benefit or advantage of, any stay or extension of law now or at any time hereafter in force, nor claim, make, nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree or judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, Debtor hereby expressly waives for itself and on behalf of each and every Person (except decree or judgment creditors of the Debtor) acquiring any interest through Debtor in, or title to, the Collateral or any part thereof subsequent to the date of this Security Agreement, all benefit and advantage of any such law or laws, and covenants that it shall not invoke or utilize any such



law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Secured Party, but shall allow and permit the execution of every such power as though no such power, law or laws had been made or enacted.

**7. EFFECT OF SALE.** Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all Persons claiming the property sold or any part thereof under, by or through the Debtor, its successors or assigns.

**8. APPLICATION OF SALE PROCEEDS.** The proceeds and/or avails of any sale of the Collateral, or any part thereof, and the proceeds and/or avails of any remedy hereunder shall be paid to and applied as follows:

**8.1** First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all property expenses, liability and advances, including legal expenses and reasonable attorneys' fees, incurred or made hereunder by the Secured Party and of all taxes, assessments or Liens superior to the Lien of these presents, except any superior Lien subject to which said sale may have been made;

**8.2** Second, to the payment of principal, interest and other amounts in respect of the Obligations; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid, then first to such other amounts, second, to such unpaid interest, and third, to such unpaid principal; and

**8.3** Third, to the payment of the surplus, if any, to the Debtor, its successors and assigns, or to whosoever may be lawfully entitled to receive the same; it being understood that Debtor shall remain liable to the Secured Party to the extent of any deficiency between the amount of the proceeds of such disposition and the aggregate amount of the sums referred to in Sections 8.1 and 8.2.

**9. DISCONTINUANCE OF REMEDIES.** In case the Secured Party shall have proceeded to enforce any right under this Security Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, the Debtor and Secured Party shall be restored to their former positions and rights hereunder with respect to the Collateral.

**10. REMEDIES CUMULATIVE.** No delay or omission of the Secured Party to exercise any right or power arising from any Default or Event of Default, shall exhaust or impair any such right or power or prevent its exercise during the continuance of such Default or Event of Default. No waiver by the Secured Party of any such Default or Event of Default, whether such waiver be full or

partial, shall extend to or be taken to affect any subsequent Default or Event of Default, or to impair the rights resulting therefrom except as may be otherwise provided herein. The Secured Party may exercise any one or more or all of the remedies hereunder and no remedy is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing now or hereafter at law or in equity; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the Obligations, operate to prejudice, waive or affect the Lien or security of this Security Agreement or any rights, powers or remedies hereunder, nor shall the Secured Party be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

**11. INDEMNITY.** The Debtor agrees to indemnify, protect and hold harmless the Secured Party from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof (except arising from the wilful misconduct or gross negligence of the Secured Party), and expenses in connection therewith, including, but not limited to, reasonable counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Security Agreement, the retention by the Secured Party of a Lien on or security interest in the Collateral, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or repossession of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or repossession of any of the Collateral resulting in damage to property or injury or death to any Person during the period while a Lien on or security interest therein remains in the Secured Party or during the period of the transfer of such Lien on or security interest in the Collateral by the Secured Party pursuant to any of the provisions of this Security Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Obligations, the release of the Lien on and security interest in the Collateral as provided in Section 13.4 hereof, or the termination of this Security Agreement in any manner whatsoever.

**12. DEFINITIONS.** As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms in this Security Agreement shall include in the singular number the plural and in the plural number the singular.

"AAR" is defined in Section 2.2(a).

"Assigned Lease" is defined in Section 1.1 hereof.

"Cash Collateral Account" is defined in Section 4.2(c).

"Casualty Loss" is defined in Section 4.2(a).

"Casualty Loss Proceeds" is defined in Section 4.2(a).

"Collateral" is defined in Section 1.1.

"Debtor" is defined in the first paragraph of this Security Agreement.

"Equipment" is defined in Section 1.1.

"ICA" is defined in Section 2.3.

"Item of Equipment" is defined in Section 1.1 hereof.

"Lien" is defined in Section 2.3.

"Loan Agreement" is defined in the first paragraph of this Security Agreement.

"Obligations" means all indebtedness (whether principal, interest, fees or otherwise), obligations and liabilities of Debtor to the Secured Party (including but not limited to those under the Loan Documents), as the same may be renewed, extended, amended, rearranged, restructured, refinanced, replaced or otherwise modified (including, without limitation, modifications to interest rates or other payment terms of such indebtedness), whether now existing or hereafter created, absolute or contingent, direct or indirect, joint or several, secured or unsecured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, or acquired by the Secured Party outright, conditionally or as collateral security from another, including but not limited to the obligation of Debtor to repay future advances by Secured Party, whether or not made pursuant to commitment and whether or not presently contemplated by Debtor and Secured Party, and the obligation to repay advances by the Secured Party under any letters of credit issued for Debtor's account and all costs of collection thereof, including but not limited to attorneys' fees and attorneys' expenses (whether or not there is litigation), court costs and all costs in connection with any proceedings under the United States Bankruptcy Code pertaining thereto.

"Permitted Lien" is defined in Section 2.3.

"Replacement Unit" is defined in Section 2.8.

"Secured Party" is defined in the first paragraph of this Security Agreement.

"Security Agreement" is defined in the first paragraph hereof.

"Section" means and refers to a section of this Security Agreement unless specified to the contrary herein.

"UCC" shall mean the Uniform Commercial Code or such other similar statute as in effect from time to time in the State of Missouri or any other appropriate jurisdiction.

### **13. MISCELLANEOUS.**

**13.1 Successors and Assigns.** Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Security Agreement contained by or on behalf of the Debtor or by or on behalf of the Secured party, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

**13.2 Partial Invalidity.** The unenforceability or invalidity of any provision or provisions of this Security Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

**13.3 Notices.** All notices and other communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States certified mails, first class, postage prepaid, return-receipt requested, addressed as follows:

If to the Debtor:

ACF Industries, Incorporated  
3301 Rider Trail South  
Earth City, MO 63045  
Attention: Treasurer

with a copy to its office at:

Icahn Associates Corp.  
114 West 47th Street  
19th Floor  
New York, New York 10036  
Attention: Robert J. Mitchell

If to the Secured Party:

The Boatmen's National Bank of St. Louis  
One Boatmen's Plaza  
800 Market Street  
St. Louis, MO 63101  
Attention: Equipment Finance Division

**13.4 Releases.** At the expense of the Debtor, the Secured Party shall release this Security Agreement, and the Lien and security interest granted hereby, by proper instrument or instruments when all indebtedness and obligations of Debtor under the Loan Agreement, Note, Security Agreement and other Loan Documents have been fully and irrevocably paid, discharged or performed.

**13.5 Governing Law.** This Security Agreement shall be construed in accordance with and governed by the laws of the

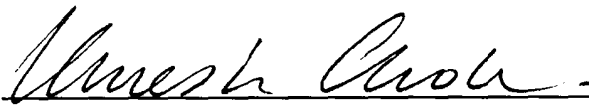
State of Missouri; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. Section 11303, the Railway Act (Canada) and such additional rights, arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Security Agreement or any assignment hereof shall be filed, recorded or deposited.

**13.6 Counterparts.** This Security Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together constituting only one Security Agreement.

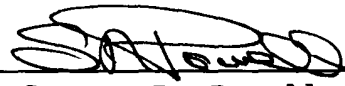
**13.7 Headings.** Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Security Agreement nor shall they affect its meaning, construction or effect.

IN WITNESS WHEREOF, the Debtor and the Secured Party have executed this Security Agreement as of the day and year first above written.

ACF INDUSTRIES, INCORPORATED

By:   
Name: Umesh Choksi  
Title: Treasurer

THE BOATMEN'S NATIONAL BANK OF ST.  
LOUIS

By:   
Name: Steven R. Powell  
Title: Vice President

SCHEDULE A  
(THE EQUIPMENT)

ACF INDUSTRIES, INCORPORATED

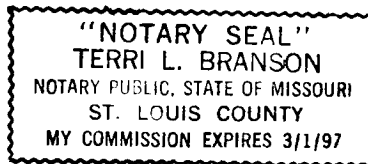
CAR COUNT	CONSECUTIVE CAR NUMBERS	AAR DESIGNATION
35	36345 - 36379	C214
1	38860	C214
2	38862 - 38863	C214
65	39243 - 39307	C214
11	39682 - 39692	C214
2	41133 - 41134	C214
4	41825 - 41828	C214
1	41831	C214
1	41835	C214
4	64899 - 64902	C214
2	64905 - 64906	C214
1	64908	C214
10	64910 - 64919	C214
7	64921 - 64927	C214
2	64929 - 64930	C214
11	64932 - 64942	C214
1	64944	C214
1	64946	C214
2	64948 - 64949	C214
1	64952	C214
4	64954 - 64957	C214
1	64959	C214
3	65044 - 65046	C214
5	65048 - 65052	C214
37	65054 - 65090	C214
30	65199 - 65228	C214
1	65239	C214
2	65248 - 65249	C214
2	65256 - 65257	C214
1	65260	C214
1	65266	C214
1	65273	C214
3	65278 - 65280	C214
2	65282 - 65283	C214
2	65288 - 65289	C214
2	65291 - 65292	C214
1	65294	C214
32	65297 - 65328	C214
6	65351 - 65356	C214
3	99858 - 99860	C214
15	39585 - 39599	C614
1	39601	C614
3	39603 - 39605	C614
25	51271 - 51295	C614
7	51641 - 51647	C614
1	71823	T055

CAR COUNT	CONSECUTIVE CAR NUMBERS	AAR DESIGNATION
12	72354 - 72365	T055
8	72367 - 72374	T055
1	76815	T104
1	76817	T104
1	76819	T104
5	71440 - 71444	T105
5	71446 - 71450	T105
1	71457	T105
3	71563 - 71565	T105
11	71670 - 71680	T105
10	72375 - 72384	T105
1	72451	T105
4	72459 - 72462	T105
6	72506 - 72511	T105
1	79493	T105
10	71264 - 71273	T106
2	72390 - 72391	T106
5	72393 - 72397	T106
4	72399 - 72402	T106
7	72404 - 72410	T106
1	71200	T107
1	71205	T107
1	71207	T107
3	71209 - 71211	T107
1	71214	T107
2	71216 - 71217	T107
2	71220 - 71221	T107
1	71223	T107
3	71225 - 71227	T107
1	71229	T107
39	71274 - 71312	T108
2	72167 - 72168	T108
3	72170 - 72172	T108
1	72278	T108
1	72450	T108
6	77361 - 77366	T426
21	77256 - 77276	T545
2	77279 - 77280	T545
1	77353	T564
1	77356	T564
546	Total	

STATE OF MISSOURI     )  
                                  ) SS  
CITY OF ST. LOUIS     )

On this 8th day of August, 1995, before me, personally appeared Umesh Choksi, to me personally known, who being by me duly sworn, says that he resides at \_\_\_\_\_

St Louis, Mo and is the Treasurer of ACF Industries, Incorporated, that the foregoing instrument was signed on such date on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

A handwritten signature in cursive script, appearing to read "Terri L. Branson".

My commission expires:

STATE OF MISSOURI     )  
                                  ) SS  
CITY OF ST. LOUIS     )

On this 8th day of August, 1995, before me, personally appeared Steven R. Powell, to me personally known, who being by me duly sworn, says that he resides at \_\_\_\_\_

St Louis, Mo and is a Vice President of The Boatmen's National Bank of St. Louis, a national banking association, that the foregoing instrument was signed on such date on behalf of said association by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Notary Public

A handwritten signature in cursive script, appearing to read "Terri L. Branson".

My commission expires:

